



**Mike Kadas**  
Director

# Montana Department of Revenue



**Steve Bullock**  
Governor

September 21, 2015

Representative Jeff Essmann  
PO Box 80945  
Billings, MT 59108-0945

Subject: Rules to Implement HB 389, L. 2015 - Review of Tax Exempt Properties

Dear Representative Essmann:

As indicated in my July 6, 2015 initial sponsor notification letter, I am providing you with the attached preview copy of the department's proposed rule amendments as part of implementing House Bill 389, L. 2015. Please let me know if you have any questions, concerns, or comments on the proposed amendments.

The department anticipates filing a Notice of Public Hearing regarding the proposed amendments, in a notice together with rulemaking actions pertaining to other ARM Title 42, Chapter 20 rules, soon. The following is an estimated timeline of events:

10/5/15*	File the proposal notice with the Secretary of State
11/5/15	Public hearing date
11/17/15	Close of public comment period
11/30/15*	File the adoption notice with the Secretary of State
12/11/15	Effective date of the amended rule

*\*If either notice is filed at a later date, this estimated timeline will shift accordingly.*

I will provide you with the proposal and adoption notices as each is filed.

Sincerely,

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Rule Reviewer  
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c. Cynthia Monteau Moore, Administrator, Property Assessment Division

42.20.102 APPLICATIONS FOR PROPERTY TAX EXEMPTIONS (1) The property owner of record, the property owner's agent, or a federally recognized tribe, must file an application for a property tax exemption on a form available from the local department office before March 1, except as provided in ARM 42.20.118, of the year for which the exemption is sought. All owners of real property who were exempt as of March 1, 2014, are required to reapply for exempt status and submit the accompanying application fee in (16) no later than March 1, 2016. Applications postmarked after March 1 will be considered for the following tax year only, unless the department determines any of the following conditions are met:

(a) the taxpayer receives notice by way of an AB-34 (Removal of Property Tax Exemption) that the property will be placed on the tax roll. The taxpayer shall have 30 days after receipt of the notice to submit an application for exemption; or

(b) the applicant was unable to apply for the current year due to hospitalization, physical illness, infirmity, or mental illness; and

(c) the applicant can demonstrate, while not necessarily continuous, the impediment(s) existed at sufficient levels in the period of January 1 to March 1, of the tax year in which the applicant is applying, to prevent timely filing of the application.

(2) The following documents must accompany all applications, unless the applicant is a federally recognized tribe. If the applicant:

(a) ~~if the applicant~~ is incorporated, a copy of the applicant's articles of incorporation;

(b) ~~if the applicant~~ is not incorporated, a copy of the applicant's constitution or by-laws; or

(c) ~~if the applicant~~ has been granted tax-exempt status by the Internal Revenue Service (IRS), a copy of the applicant's tax-exempt status letter (501 determination):

(i) identifying the parcel by geocode, assessor code, legal description, or physical address;

(ii) explaining how the organization, or society, qualifies for the property tax exemption; and

(iii) stating the specific use of the real or personal property.

(3) A tribal resolution must accompany all applications submitted by a federally recognized tribe that:

(a) identifies the fee land, by legal description;

(b) states the type of exemption the tribe is requesting;

(c) states how the property qualifies for the exemption; and

(d) states the specific and exclusive use of the real or personal property.

(4) For personal property exemption applications, the following documents must accompany all applications:

(a) a copy of the title of motor vehicle or mobile home; or a letter identifying ownership, if title is not applicable; and

(b) a photograph of the property.

(5) For real property exemption applications, the following documents must accompany the applications:

(a) a copy of a fully executed deed, or a contract for deed, or a notice of purchaser's interest, or a security agreement identifying ownership.

(6) For real property exemption applications where the applicant is requesting exemption of property used for religious purposes, the following documents must accompany the application:

- (a) if the application seeks exemption for parsonage, proof that the resident of the building identified as a parsonage is a member of the clergy; or
- (b) if the applicant is a federally recognized tribe, a copy of the tribal resolution:
  - (i) identifying the fee land by legal description, not to exceed 15 acres, as sacred land to be used exclusively for religious purposes;
  - (ii) stating the type of exemption the tribe is requesting; and
  - (iii) stating how the property qualifies for this type of exemption.

(7) For real property exemption applications where the applicant is requesting exemption of property used for educational purposes, the following documents must accompany the application:

- (a) documentation verifying the entity is not operated for gain or profit;
- (b) a copy of the applicant's attendance policy;
- (c) a copy of the applicant's curriculum which identifies the applicant's systematic course of instruction;
- (d) for property, of any acreage, owned by a tribal corporation created for the sole purpose of establishing schools, colleges, and universities (a) through (c) must accompany the tribe's application; and
- (e) if the applicant is a federally recognized tribe, a copy of the tribal resolution:
  - (i) identifying the fee land, by legal description, to be used exclusively for educational purposes;
  - (ii) stating the type of exemption the tribe is requesting; and
  - (iii) stating how the property qualifies for this type of exemption.

(8) For real property exemption applications where the applicant is requesting exemption of property used for nonprofit healthcare facilities, the following documents must accompany the application:

- (a) a copy of the health care facility's license from the Department of Public Health and Human Services; or
- (b) if the applicant is a federally recognized tribe, a copy of the tribal resolution:
  - (i) identifying the fee land, by legal description, to be used exclusively for health care services;
  - (ii) stating the type of exemption the tribe is requesting; and
  - (iii) stating how the property qualifies for this type of exemption.

(9) For real property exemption applications where the applicant is requesting exemption of property used solely in connection with a cemetery or cemeteries, the following documents must accompany the application:

- (a) proof of a permanent care and improvement fund;
- (b) verification that the entity is not operated for gain or profit; and
- (c) if the applicant is a federally recognized tribe, a copy of the tribal resolution:
  - (i) identifying the fee land, by legal description, to be used exclusively as a cemetery or cemeteries;
  - (ii) stating the type of exemption the tribe is requesting; and
  - (iii) stating how the property qualifies for this type of exemption.

(10) For real property exemption applications submitting use for parks and recreational facilities, the following documents must accompany the applications:

- (a) documentation verifying the park and/or recreational facility is open to the general public; or
- (b) if a federally recognized tribe, a tribal resolution;
  - (i) identifying the fee land, by legal description, to be used exclusively for parks and recreational facilities, by legal description; and
  - (ii) language stating the type of exemption the tribe is requesting; and
  - (iii) language stating how the property qualifies for this type of exemption, not to exceed 640 acres.

(11) For real property exemption applications where the applicant is requesting an 8-year exemption for up to 15 acres of property owned by a purely public charity, as set forth in 15-6-201, MCA, the following apply:

- (a) all documents in (5) must be submitted with the application;
- (b) the exemption applies to only the general taxes, not the special fees and assessment charges imposed by the local governments;
- (c) upon the department's approval of the 8-year exemption, the department will file a notice of exemption with the clerk and recorder in the county where the property is located. The notice shall:
  - (i) indicate that the exemption has been granted;
  - (ii) describe the penalty for default; and
  - (iii) specify that default will create a lien on the property by operation of law;
- (d) the department shall notify the applying entity that the application has been approved and a notice exemption on the property has been filed with the county clerk and recorder;
- (e) an organization granted an 8-year exemption must notify the department on an annual basis by March 1 whether the property has been placed into a public charitable use;
- (f) for property not used directly for the charitable purpose intended within the 8-year exemption period, or for property sold or transferred before it is entered into direct charitable use, the exemption is revoked and the property is taxable as follows. If the property:
  - (i) has completed the 8 years without being placed into a public charitable purpose, the tax will be calculated using the current year's ad valorem tax multiplied by 8 years; or
  - (ii) has been sold or the exemption status is revoked prior to the end of the 8-year period, the tax will be calculated using the current year's ad valorem tax multiplied by the number of years the property was exempt before the date of sale or revocation. For example, if the property was exempt for 4 years of the approved 8-year period, the tax will be the current year's ad valorem tax multiplied by 4; and
- (g) upon default and removal of the 8-year exemption, the department will inform the county clerk and recorder that a lien was created on the property by operation of law, and inform the county treasurer that the lien on the property is being executed and that taxes will be due.

(12) For real property exemption applications where the applicant is requesting exemption for property used for low-income housing, as set forth in 15-6-221, MCA, all documents in (2) must be submitted with the application and also include:

(a) documentation that the property is dedicated to providing affordable housing to low-income tenants;

(b) a copy of the IRS tax exemption status letter (if a limited partnership-general partner is a non-profit corporation with a IRS 501(c)3 exemption);

(c) a copy of the Board of Housing letter allocating low-income tax credits;

(d) documentation that at least 20 percent of the residential units are rent-restricted and rented to tenants whose household incomes do not exceed 50 percent of the median family income for the county, and at least 40 percent of the residential units are rent-restricted to persons whose household incomes do not exceed 60 percent of the median income for the county;

(e) a copy of the deed or other legally binding document that restricts the property's usage;

(f) a letter stating that the property meets a public purpose in providing housing to an underserved population and provides a minimum of 50 percent of the units in the property to tenants at 50 percent of the median family income for the area, with rents restricted to a maximum of 30 percent of 50 percent of median family income;

(g) a copy of the owner's partnership or operating agreement or accompanying document providing that at the end of the compliance period, the ownership of the property may be transferred to the non-profit corporation or housing authority general partner; and

(h) documentation, such as the hearing minutes or newspaper notification, that a public hearing was held to consider whether the property meets a community housing need.

~~(14)~~(13) Upon receipt of the application and supporting documents, the local department office will perform a field evaluation. The department will approve or deny the application. The applicant and the local department office will be advised, in writing, of the decision.

~~(12)~~(14) If the property is owned by a governmental entity (such as city, county, or state), the federal government (unless Congress has passed legislation allowing the state to tax property owned by a federal entity), tribal government, nonprofit irrigation districts organized under Montana law, municipal corporations, public libraries, or rural fire districts and other entities providing fire protection under Title 7, chapter 33, MCA, the department will employ the following exemption criteria for real property when considering exemption claims based upon 15-6-201, MCA:

(a) the properties will be tax-exempt as of the purchase date that is reflected on the deed or security agreement;

(b) if a property is tax-exempt as of January 1 of the current tax year and is sold to a nonqualifying purchaser after January 1 of the current tax year, it becomes taxable upon the transfer of the property. The tax is prorated according to 15-16-203, MCA;

(c) if a property is tax-exempt, as stated in (12)(b), and is sold as tax-deed property to a nonqualifying purchaser after January 1 of the current tax year, it becomes taxable on January 1 following the execution of such contract or deed as provided in 7-8-2307, MCA; and



(d) if a tribal government is requesting an exemption of an essential government service, as provided by statute, that service must be identified in the application.

(15) Real property exemption renewal applications must provide the documentation specified in this rule and also include a copy of IRS form 990 identifying the gross receipts of the entire organization. Real property exemption renewal applications will be charged a processing fee as follows:

(a) \$15 for vacant land parcels 1 acre or less;

(b) \$20 for parcels 1 acre or less with one improvement and no complex structures;

(c) \$35 for parcels 1 acre or less with one improvement with complex structures;

(d) \$35 for parcels 1 acre or more (land and/or buildings); or

(e) \$0 for non-profit entities with gross receipts less than \$5,000.

AUTH: 15-1-201, 15-6-230, 15-6-231, MCA

IMP: 7-8-2307, 15-6-201, 15-6-203, 15-6-209, ~~15-6-211~~, 15-6-216, 15-6-221, 15-6-230, 15-6-231, 15-6-233, 15-6-311, 15-7-102, MCA

REASON: The department proposes amending ARM 42.20.102 due to the enactment of House Bill (HB) 389, L. 2015, which requires the department to review tax exempt properties and requires all entities owning real property to reapply for exempt status.

The department proposes adding new language in (1) to inform entities currently in exempt status to reapply for exempt status by March 1, 2016. The department further proposes adding new (15) to delineate the processing fees charged to entities applying for a property tax exemption and the required documentation.

The department also proposes adding new (11) to address the process the department follows when an 8-year property exemption is approved for purely public charities, what happens when the exemption is removed, the requirements for purely public charities to maintain exempt status for the duration of the 8 years, instances when the exemption is revoked, and how the taxes are calculated in the event of a revocation.

The language proposed with new (12) is intended to clarify the process and specify the required documents for entities seeking an exemption for low-income housing. While this information is available in 15-6-221, MCA, the department frequently receives questions from new applicants about the process and what documentation to include and determined it would be helpful to detail that information in this rule.

The department further proposes revising the outline structure in (2) to remove excess language and proposes reformatting the outline structure in (10) to make it consistent with similar language sections in this same rule.

The department also proposes updating the implementing section of the rule to correspond with the legislative changes in SB 157, L. 2015, which repealed 15-6-211, MCA, and replaced it with 15-6-311, MCA.

Furthermore, as HB 389, Section 1 is codified at 15-6-231, MCA, and HB 389, Section 3 is codified at 15-6-233, MCA, the department proposes adding these two

statutes to the implementing section of the rule and proposes adding 15-6-231, MCA, as additional rulemaking authority for the rule.

42.20.106 DEFINITIONS The following definitions apply to this subchapter:

(1) through (4) remain the same.

(5) "Complex structure" means improvements that have an intricate or complicated association or assemblage of related parts or units. Some examples include, but are not limited to:

(a) an office building where only a portion of the building is exempt;

(b) a multi-floor hospital; or

(c) an apartment complex used for low-income housing.

(5) through (22) remain the same, but are renumbered (6) through (23).

AUTH: 15-1-201, 15-6-231, 15-7-111, MCA

IMP: 15-6-101, 15-6-232, 15-7-111, 15-7-112, 15-7-304, 15-7-306, 15-9-101, 15-24-1501, MCA

REASON: The department proposes amending ARM 42.20.106 to define the term "complex structure" because that term is proposed to be added to a rule in this subchapter as part of implementing House Bill (HB) 389, L. 2015.

Furthermore, as HB 389, Section 1 is codified at 15-6-231, MCA, and HB 389, Section 2 is codified at 15-6-232, MCA, the department proposes adding the statutes to the authorization and implementing sections of the rule accordingly.